

BROWN RUDNICK LLP

David J. Molton
May Orenstein
Daniel J. Saval
Marek P. Krzyzowski
Seven Times Square
New York, New York 10036
Telephone: (212) 209-4800

Counsel for the Foreign Representatives

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 15 Case
FAIRFIELD SENTRY LIMITED, et al.,)	
)	Case No: 10-13164 (SMB)
Debtors in Foreign Proceedings.)	
)	Jointly Administered
<hr/>		
FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,)	
)	
Plaintiffs,)	Adv. Pro. No. 10-03496
-against-)	
)	
THEODOOR GGC AMSTERDAM, et al.,)	Administratively
)	Consolidated
Defendants.)	
<hr/>		
FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,)	
)	
Plaintiffs,)	Adv. Pro. No. 10-03635
-against-)	
)	
ABN AMRO Schweiz AG, et al.,)	
)	
Defendants.)	
<hr/>		
FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,)	
)	
Plaintiffs,)	Adv. Pro. No. 10-03636
-against-)	
)	
ABN AMRO Schweiz AG, et al.,)	
)	
Defendants.)	

**FOREIGN REPRESENTATIVES' MEMORANDUM OF LAW IN
OPPOSITION TO SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANTS' MOTION TO DISMISS AND IN FURTHER SUPPORT OF
FOREIGN REPRESENTATIVES' MOTION FOR LEAVE TO AMEND COMPLAINTS**

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
ARGUMENT	2
I. Incorporation Of The Liquidators’ Omnibus Brief.....	2
II. Defendant Was Properly Served.....	2
CONCLUSION.....	4

Kenneth M. Krys and Charlotte Caulfield (together, the “Liquidators” or “Foreign Representatives”), in their capacities as the duly appointed Liquidators and Foreign Representatives of Fairfield Sentry Limited (In Liquidation) (“Sentry”), Fairfield Sigma Limited (In Liquidation) (“Sigma”), and Fairfield Lambda Limited (In Liquidation) (“Lambda,” and together with Sentry and Sigma, the “Funds”) in the consolidated adversary proceedings (the “Redeemer Actions”), by and through their undersigned counsel, respectfully submit this memorandum of law in opposition to Union Bancaire Privée, UBP SA’s *Supplemental Memorandum of Law in Support of Defendants’ Motion to Dismiss* (“Defendant’s Joinder and Supplemental MTD”) and in further support of the Foreign Representatives’ motion for leave to amend the complaints in the Redeemer Actions (the “Motion to Amend”).¹ In opposition to Defendant’s Joinder and Supplemental MTD and in support of the Motion to Amend, the Liquidators state as follows:

PRELIMINARY STATEMENT

Defendant Union Bancaire Privée, UBP SA’s (“Defendant”)² argument that service was improper is meritless. Defendant consented to service of process by mail in the Subscription Agreement, and the Liquidators served Defendant in compliance with that provision. Thus, service was effective for purposes of federal law.

¹ Capitalized terms used by not otherwise defined herein shall have the meanings ascribed to them in the *Foreign Representative’s Memorandum of Law in Opposition to Defendants’ Consolidated Memorandum of Law and in Further Support of Foreign Representatives’ Motion for Leave to Amend Complaints*, dated Mar. 31, 2017 (Adv. Pro. 10-03496, Dkt. No. 1336).

² Defendant ABN AMRO Schweiz AG a/k/a ABN AMRO (Switzerland) AG changed its name to Union Bancaire Privée, UBP SA as the result of a merger. *See* Letter to the Clerk of Court [Dkt. No. 106]. As alleged in the proposed Fourth Amended Complaint, upon information and belief, Defendant is a customer of the registered shareholder. *See* Proposed Fourth Amended Complaint, ¶ 31.

ARGUMENT

I. Incorporation Of The Liquidators' Omnibus Brief.

Defendant joins in the Consolidated Motion to Dismiss Brief (Adv. Pro. 10-03496, Docket Number 960) (the "Consolidated MTD Brief"). In opposition to Defendant's Joinder and Supplemental MTD, the Liquidators adopt and incorporate herein, the Opposition to the Consolidated Opposition to Plaintiffs' Motion for Leave to Amend and Motion to Dismiss (the "Liquidators' Omnibus Brief"), filed in Adversary Proceeding No. 10-03496, on March 31, 2017 [Dkt. No. 1336]. Defendant also joins in the Motion to Dismiss on the Ground of *Forum Non Conveniens* (Adv. Pro. 12-1599, Dkt. No. 27), and in response the Liquidators adopt and incorporate herein their Opposition to Certain Defendants' Motion to Dismiss on Grounds of *Forum Non Conveniens* (Adv. Pro. 12-1599).

II. Defendant Was Properly Served.

Defendant argues that service was improper on it, a Swiss entity, for the reasons set forth in the Consolidated MTD Brief. For the reasons detailed in the Liquidators' Omnibus Brief, service on Defendant was proper. *See* Liquidators' Omnibus Brief, at § VI.

As detailed in the Liquidators' Omnibus Brief, Defendant expressly consented to service by mail in the Forum Clause of the Subscription Agreement. *See* Liquidators' Omnibus Brief, at § VI.A.1. Many cases hold that, in contracts like these, parties may consent to forms of service not authorized in the rules, or even waive service entirely. *See id.* The Forum Clause applies to this dispute and binds registered shareholders and their beneficial shareholders. *See* Liquidators' Omnibus Brief, at §§ I.A.1, VI.B.

The Liquidators fully complied with the Forum Clause by serving Defendant by mail. The Subscription Agreement provided the specific form of mail service used by the Liquidators:

“Subscriber consents to the service of process out of any New York court in any such Proceeding, *by the mailing of copies thereof, by certified or registered mail, return receipt requested*, addressed to the Subscriber at the address of Subscriber then appearing on the Fund’s records.” *See* Liquidators’ Omnibus Brief, at § VI.A.1 (emphasis added). Even if Swiss law prohibits mail service, as Defendant argues (*see* Defendant’s Joinder and Supplemental MTD, at 2), service by mail remains effective for purposes of federal law. *See* Liquidators’ Omnibus Brief, at § VI.B. Swiss law does not govern the legal effect of the Subscription Agreements in U.S. courts and Defendant cites to no case to support the view that Swiss law can change the law of service in this Court. *See id.* Thus, the Liquidators’ service on Defendant by International Registered Mail (see Affidavits of Service [Adv. Pro. 10-03635 Dkt. Nos. 53, 54, 78, 91; Adv. Pro. 10-03636 53, 54, 79, 80, 92]), was effective.³

³ As discussed further in the Liquidators’ Omnibus Brief, in the event this Court determines that service on any Defendant was ineffective, the Liquidators should be provided with the opportunity to re-serve such parties via whatever means are ruled effective as to such Defendant. *See* Liquidators’ Omnibus Brief, at § VI.B.

CONCLUSION

For the foregoing reasons, the Liquidators respectfully request that Defendant's Joinder and Supplemental MTD be denied and the Liquidators' Motion to Amend be granted.

Dated: New York, New York
April 4, 2017

BROWN RUDNICK LLP

By: /s/ David J. Molton
David J. Molton
May Orenstein
Daniel J. Saval
Marek P. Krzyzowski

7 Times Square
New York, New York 10036
Telephone: 212.209.4800
Facsimile: 212.209.4801
dmolton@brownrudnick.com
dsaval@brownrudnick.com
mkrzyzowski@brownrudnick.com

Counsel for the Foreign Representatives